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The Pitney Bowes Bank, Inc., and Wheeler
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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

PACIFIC OFFICE AUTOMATION, INC.,
an Oregon corporation,

Plaintiff,

v.

PITNEY BOWES, INC., a Delaware
corporation; PITNEY BOWES GLOBAL
FINANCIAL SERVICES, LLC, a Delaware
limited liability company; THE PITNEY
BOWES BANK, INC., a federal banking
institution; WHEELER FINANCIAL
FROM PITNEY BOWES, INC., a
Delaware corp.;

Defendants.

Case No. 3:20-cv-00651-AR

**DEFENDANTS' UNOPPOSED
MOTION TO ESTABLISH CASE
SCHEDULE THROUGH OPENING
BRIEFS ON SUMMARY
JUDGMENT MOTIONS ON
LIABILITY ISSUES**

L.R. 7-1 CERTIFICATION

Pursuant to L.R. 7-1, the undersigned counsel for Defendants certifies that he and Plaintiff's counsel have conferred and that they have reached agreement on the case schedule through the filing of Phase 1 (liability issues) motions for summary judgment, which agreement is reflected in the dates set forth herein.

MOTION

Pursuant to agreements between the parties on the completion of fact discovery and intervals between certain events following the cut-off date for the completion of fact discovery, Defendants move, without opposition from Plaintiff, for an order establishing the following deadlines:

<u>Event</u>	<u>Deadline Date</u>
The April 22, 2022 deadline for the completion of fact discovery (ECF No. 96) is stricken in favor of the May 22 and June 10, 2022 dates which follow. Consistent with ECF No. 96, additional discovery through June 10 is limited to Plaintiff's making productions and providing information to comply with the Third Motion to Compel (as modified), the Fourth Motion to Compel, and to making Mr. Brooks Newsom available to be interviewed.	April 22, 2022 (stricken)
Deadline for Plaintiff to produce all outstanding documents and other information committed to in order to comply with Third Motion to Compel (as modified) and Fourth Motion to Compel.	May 22, 2022
Deadline for POA to make Brooks Newsom available for an interview on documents and information Plaintiff has produced and produces in response to the Third Request for Production of Documents (as modified), Interrogatory 17, and the Fourth Request for Production of Documents.	June 10, 2022
Deadline for all Phase 1 (liability) expert reports and expert disclosures (FRCP 26(a)(2)(B) and 26(a)(2)(C)), covering all liability issues as to which a party has the burden.	August 3, 2022

<u>Event</u>	<u>Deadline Date</u>
Completion of depositions of all Phase 1 experts who made reports/disclosures under either FRCP 26(a)(2)(B) and 26(a)(2)(C)).*	September 2, 2022
Phase 1 Rebuttal expert reports/disclosures ((FRCP 26(a)(2)(B) and 26(a)(2)(C))).	November 3, 2022
Depositions of Phase 1 Rebuttal Experts.*	December 5, 2022
Deadline for filing Dispositive Motions for Phase 1 - all liability issues.	February 6, 2023

*The party on whose behalf any expert report or disclosure was made must make that expert available for a deposition within 30 days of the submission of the report/disclosure

MEMORANDUM

This Motion implements two agreements between the parties: (1) an agreement resolving Defendants' Motions Third and Fourth Motions to Compel (which is the subject of a just-filed Motion for Entry of a Stipulated Order); and (2) an agreement that the parties reached long ago regarding how this case should proceed following the completion of fact discovery. The first agreement requires striking the April 22, 2022 cut-off for fact discovery established by ECF No. 96 and replacing it with the May 22 and June 10 dates set forth above in the motion, and the May 22 date matches the deadline for production set forth in the just-filed Motion for Entry of a Stipulated Order.

As to the second agreement, the parties long ago agreed that expert reports, expert depositions, and summary judgment motions would be bifurcated between liability and damages phases, with the damages phase not beginning until after resolution of summary judgment motions on liability issues. The parties further agreed on the intervals that would occur between expert reports, expert depositions, rebuttal reports, and open summary judgment briefs. The parties reported this agreement identically three times in Joint Status Reports: ECF No. 82 at 2-4; ECF No. 88 at 3-5; and ECF No. 93 at 4-6. The agreed-upon deadlines contained in these

Joint Status Reports are stated in terms of intervals keyed off of the deadline for completion of fact discovery – a date which, at the times these Joint Status Reports were filed, had not yet been established.

Given the dates that the Stipulated Order Resolving the Third and Fourth Motions to Compel establishes, it is now possible to implement the parties’ scheduling agreement with exact dates through the deadline for opening briefs on any motions for summary judgment on liability issues. That is precisely what the chart in the motion section above does, starting with the August 3, 2022 deadline, and the parties have confirmed their agreement to all the above dates prior to the filing of this Motion. Therefore, in order to implement the parties’ agreements, Defendants respectfully request that the Court order the events set forth in the chart above to occur by the dates set forth in the chart above.¹

DATED: April 22, 2022

K&L GATES LLP

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¹ Defendants note that the parties also reached an agreement, set forth in the three Joint Status Reports, on intervals for expert disclosures, depositions, and summary judgment briefs for Phase 2 – Damages – to the extent any part of the case remains after motions for summary judgment on liability issues have been resolved. It is not possible to set dates for those events now, because the intervals are keyed off of resolution of the Phase 1 motions for summary judgment on liability issues.

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2022, I caused to be served a copy of the foregoing upon all counsel of record via the Court's CM/ECF electronic service system.

s/ Philip S. Van Der Weele

Philip S. Van Der Weele, OSB #863650